

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CRAY INC.,

Plaintiff,

v.

RAYTHEON COMPANY,

Defendant.

CASE NO. C15-1127JLR

ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANT'S MOTION TO  
DISMISS FOR LACK OF  
PERSONAL JURISDICTION

**I. INTRODUCTION**

Before the court is Defendant Raytheon Company's motion to dismiss Plaintiff Cray Inc.'s amended complaint for lack of personal jurisdiction. (Mot. (Dkt. # 37); *see also* Am. Compl. (Dkt. # 29).) In its amended complaint, Cray alleges that Raytheon misappropriated Cray's high performance computing ("HPC") technology, used that technology to apply for several patents, failed to disclose Cray's technology to the Patent Office as relevant prior art, failed to inform the Patent Office that Cray was an inventor of the HPC technology, and having received several patents based on Cray's technology,

1 has accused Cray of infringing those patents. (*See* Am. Compl. ¶¶ 9-11, 17-30.) Cray  
 2 brings claims for (1) a declaratory judgment that Cray does not infringe four of  
 3 Raytheon’s patents (“the Patents-in-Suit”),<sup>1</sup> (2) a declaratory judgment that two of the  
 4 Patents-in-Suit are unenforceable for inequitable conduct, (3) a declaratory judgment that  
 5 the same two patents are unenforceable for unclean hands, (4) correction of inventorship  
 6 related to the same two patents,<sup>2</sup> (5) breach of contract, (6) unjust enrichment, and (7)  
 7 conversion. (*See id.* ¶¶ 31-123.)

8 Raytheon moves to dismiss this case on the ground that this court does not have  
 9 personal jurisdiction over Raytheon for any of the claims in Cray’s amended complaint.  
 10 (*See* Mot. at 6-8.) The court has considered the motion, all submissions filed in support  
 11 thereof and opposition thereto, the balance of the record, and the applicable law. Being  
 12 fully advised,<sup>3</sup> the court GRANTS in part and DENIES in part Raytheon’s motion for the  
 13 reasons set forth below.

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 18 <sup>1</sup> The Patents-in-Suit are United States Patent Nos. 7,475,274 (“the ’274 Patent”),  
 19 8,190,714 (“the ’714 Patent”), 8,335,909 (“the ’909 Patent”), and 9,037,833 (“the ’833 Patent”).  
 (*See* Am. Compl. ¶¶ 3-7, Exs. A-D.)

20 <sup>2</sup> The two Patents-in-Suit that are the subject of Cray’s inequitable conduct, unclean  
 21 hands, and correction of inventorship claims are the ’909 and ’833 Patents. (*See* Am. Compl.  
 ¶¶ 51-108.)

22 <sup>3</sup> Although both parties have requested oral argument, the court deems oral argument to  
 be unnecessary for the disposition of this motion. *See* Local Rules W.D. Wash. LCR 7(b)(4).

## II. BACKGROUND

### A. Factual Background

Cray is a Washington corporation that has its principal place of business in Seattle, Washington, and “is a worldwide leader in advanced supercomputing.” (Am. Compl.

¶ 1.) Raytheon is Delaware corporation that has its principal place of business in Waltham, Massachusetts, and “is a technology and innovation leader specializing in defense, civil government and cybersecurity markets throughout the world.” (Mot. at 9-10; Am. Compl. ¶ 2.) In addition, Raytheon “has been a leader in the HPC field” and has been awarded “numerous” patents for its HPC innovations, including the Patents-in-Suit. (Mot. at 10.) “No longer actively engaged in the HPC market,” Raytheon now licenses its HPC technology to HPC manufacturers such as Cray. (*Id.* at 10-11; *see id.*; Resp. (Dkt. # 41) at 7.)

Cray alleges that in 2002 it entered into a contract with Sandia National Laboratories (“Sandia”) related to the development of an HPC system known as “Red Storm.” (Am. Compl. ¶ 18.) As part of the pre-contract bidding process and post-contract development of Red Storm, Cray submitted to Sandia representatives confidential and propriety information regarding the design and operation of Red Storm, including information on Cray’s “SeaStar interconnect chip.” (*Id.* ¶ 19.) Among the Sandia representatives to which Cray submitted this information was an oversight committee that was responsible for validating and challenging Cray’s design of Red Storm. (*Id.*) Former Raytheon employee James Ballew was an external member of the oversight committee. (*Id.* ¶¶ 20, 23 (alleging that emails “sent and received by Mr.

1 Ballew in his role as a member of oversight committee [sic] used a ‘raytheon.com’ email  
2 address”); *see also* Mot. at 7, 25.)

3 Cray alleges that as part of Mr. Ballew’s participation on the oversight committee,  
4 Mr. Ballew “worked and interacted with Cray employees residing in its Seattle,  
5 Washington office” (Am. Compl. ¶ 22), and that Cray “disclosed to Mr. Ballew  
6 confidential and proprietary details concerning its design of the Red Storm system. Such  
7 information included technical details concerning the interconnect of the Red Storm  
8 system . . .” (*id.* ¶ 20; *see also id.* ¶ 21). According to Cray, Mr. Ballew had an  
9 obligation to “hold Cray’s confidential and proprietary information in confidence.” (*Id.*  
10 ¶ 24.)

11 In addition, Cray alleges that it entered into three non-disclosure agreements  
12 (“NDAs”) with Raytheon or a Raytheon agent between November 18, 2003, and  
13 February 20, 2004. (*See id.* ¶¶ 25-27.) All three NDAs specified that Cray is a  
14 Washington corporation and provided that Cray was to disclose confidential and  
15 proprietary information to Raytheon for Raytheon to evaluate the possibility of using  
16 Cray products. (*See id.* (noting that the third NDA provided for disclosure to Raytheon  
17 of confidential information regarding Red Storm).) Cray further alleges that “[d]uring  
18 the development of the Red Storm System, Cray disclosed extensive confidential and  
19 proprietary information to Raytheon, both to Mr. Ballew and others at Raytheon.” (*Id.*  
20 ¶ 28.)

21 According to Cray, on April 15, 2004, following Cray’s “extensive disclosure of  
22 confidential and proprietary information concerning its Red Storm system, including the

1 associated SeaStar interconnect chip,” Raytheon and Mr. Ballew filed United States  
2 Patent Application No. 10/824,874 (“the ’874 Application”). (*Id.* ¶¶ 28-29.) This  
3 application “was the patent application leading to the ’909 and ’833 [P]atents,” both of  
4 which list Mr. Ballew as an inventor. (*Id.* ¶¶ 20, 28.) The ’874 Application “contained  
5 technical information similar or identical to information disclosed to Mr. Ballew and  
6 Raytheon by Cray concerning the Red Storm system.” (*Id.* ¶ 29.) Furthermore, Cray  
7 maintains that “Mr. Ballew and others at Raytheon intentionally acquired a substantial  
8 portion of this information from Cray and its employees located in Washington.” (*Id.*;  
9 *see also id.* ¶¶ 21 (“[T]he Cray personnel primarily responsible for the SeaStar  
10 interconnect design that was incorporated into the Red Storm system resided and worked  
11 in Washington.”), 54.) Cray also asserts that in prosecuting the ’909 and ’833 Patents,  
12 Raytheon failed to inform the Patent Office that Cray was an inventor of the subject  
13 technology and that Cray’s Red Storm system and SeaStar interconnect were material  
14 prior art. (*See, e.g., id.* ¶¶ 54-68, 79-86.)

15 In early 2015, Raytheon engaged a Dallas-based patent-licensing firm,  
16 International Patent Licensing Co., LLC (“IPLC”), to offer Raytheon’s HPC technology  
17 to Cray. (*See* Stringfield Decl. (Dkt. # 39) ¶ 2, Ex. 1 (“3/20/15 Letter”).) IPLC sent Cray  
18 a March 20, 2015, letter identifying four Raytheon patents and explaining how certain  
19 Cray products or services mapped onto those patents. (*See id.*; Stringfield Decl. ¶ 3, Exs.  
20 2-4.) According to Raytheon, the purpose of the letter was to negotiate a license  
21 agreement with Cray that would be fair and beneficial to both parties. (*See* Mot. at 11;  
22 3/20/15 Letter at 2 (“Raytheon has authorized IPLC to represent Raytheon in negotiating

1 a patent license agreement with Cray that will be fair to both parties and will enable Cray  
2 to derive important business benefits, including continued use of Raytheon’s patented  
3 technology.”.) On May 12, 2015, IPLC sent a follow-up letter providing additional  
4 details and reiterating that Raytheon believed in the importance of a licensing discussion  
5 and a mutually beneficial agreement with Cray. (*See* Stringfield Decl. ¶¶ 4-5, Exs. 5-6.)  
6 Cray’s associate general counsel, Michael Fleming, responded in a May 13, 2015, letter  
7 in which he accepted IPLC’s “invitation to discuss and understand [Raytheon’s] business  
8 proposals.” (*Id.* ¶ 6, Ex. 7.)

9 On June 18, 2015, representatives of Cray and Raytheon met at Cray’s Seattle  
10 offices. (*See id.* ¶¶ 6-9, Exs. 7-16.) During the meeting, Raytheon gave slide  
11 presentations showing how Cray products or services map onto five Raytheon  
12 patents—four of which were the Patents-in-Suit—explaining the significance and value  
13 of Raytheon’s patented HPC technology, and describing the development of Raytheon’s  
14 HPC technology. (*See id.* ¶¶ 8-9, Exs. 9-16.) Each of the slide decks was marked with a  
15 legend: “Raytheon / Cray Patent License Settlement Discussions – Federal Rule 408  
16 Applies” or “Raytheon / Cray Patent License Settlement Discussions – U.S. Federal Rule  
17 408 Applies.” (*Id.* ¶ 9, Exs. 10-16.)

18 In the two weeks following the June 18, 2015, meeting, IPLC sent Cray two  
19 emails and one letter. (*See id.* ¶¶ 8, 10, 12, Exs. 9, 17, 21.) The first email included the  
20 slide decks from Raytheon’s presentation. (*See id.* ¶¶ 8-9, Exs. 9-16.) The second email  
21 and the letter provided additional details regarding some of the patents discussed at the  
22

1 meeting. (*See id.* ¶¶ 10-13, Exs. 17-22.) IPLC phrased the second email and the letter as  
2 pertaining to the parties' licensing negotiations. (*See id.* ¶¶ 10, 12, Exs. 17, 21.)

### 3 **B. Procedural Background**

4 On July 15, 2015, Cray filed the instant lawsuit against Raytheon. (*See* Compl.  
5 (Dkt. # 1).) Cray's original complaint contained nine counts, each of which requested a  
6 declaratory judgment that Cray does not infringe one of Raytheon's patents. (*See id.* at  
7 4-9.) The original complaint contained no allegations of misappropriation, breach of an  
8 NDA, or misconduct before the Patent Office. (*See id.* at 1-10.) Instead, the original  
9 complaint alleged only that Raytheon had accused Cray of infringing Raytheon's patents  
10 and that a real controversy therefore existed regarding whether Cray indeed infringes.  
11 (*See id.*) On September 25, 2015, Raytheon filed suit against Cray in the Eastern District  
12 of Texas alleging infringement of the Patents-in-Suit. (*See* Stringfield Decl. ¶ 16, Ex.  
13 25.)

14 On the same day, Raytheon responded to Cray's original complaint in this case by  
15 filing a motion to dismiss. (*See* MTD (Dkt. # 24).) Raytheon argued in that motion that  
16 this court lacked personal jurisdiction over Cray's claims for declaratory judgment of  
17 non-infringement. (*See id.* at 18-25; *see also id.* at 25-28 (arguing in the alternative that  
18 the court lacked subject matter jurisdiction over some of Cray's claims).) Rather than  
19 filing an opposition to that motion, Cray filed its first amended complaint, which is  
20 currently the operative complaint. (*See* Am. Compl. (filed on October 16, 2015).)

21 Cray's amended complaint adds the allegations regarding Cray's work with  
22 Sandia, Red Storm, Mr. Ballew, and Raytheon's alleged misappropriation and misuse of

1 Cray's HPC technology. *See supra* § II.A; (*compare* Am. Compl. with Compl.) Further,  
 2 in the amended complaint Cray has removed five non-infringement counts, repleaded the  
 3 four non-infringement counts pertaining to the Patents-in-Suit, and added nine new  
 4 claims. (*Compare* Am. Compl. with Compl.) Four of the new claims are for declaratory  
 5 judgments that the '909 and '833 Patents are unenforceable for inequitable conduct and  
 6 unclean hands. (*See* Am. Compl. at 10-20.) Two of the new claims are for correction of  
 7 inventorship of the '909 and '833 Patents, and the remaining three new claims assert  
 8 state-law causes of action for unjust enrichment, conversion, and breach of contract. (*See*  
 9 *id.* at 20-23.)

10 After Cray filed its amended complaint, the court denied Raytheon's first motion  
 11 to dismiss without expressing an opinion on the merits of the motion. (*See* 11/4/15 Order  
 12 (Dkt. # 36) at 2-3.) On November 25, 2015, Raytheon filed the present motion to dismiss  
 13 for lack of personal jurisdiction. (*See* Mot.) Raytheon's renewed motion is now before  
 14 the court.

### 15 III. DISCUSSION

#### 16 A. Legal Standard

17 Federal Rule of Civil Procedure 12(b)(2) allows a defendant to move to dismiss  
 18 claims against it for lack of personal jurisdiction. *See* Fed. R. Civ. P. 12(b)(2). In  
 19 opposing a defendant's motion to dismiss for lack of personal jurisdiction, the plaintiff  
 20 bears the burden of establishing that jurisdiction is proper. *CollegeSource, Inc. v.*  
 21 *AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011). However, in the absence of an  
 22 evidentiary hearing, "the plaintiff need only make 'a prima facie showing of



jurisdictional facts to withstand the motion to dismiss” *Wash. Shoe Co. v. A-Z Sporting Goods, Inc.*, 704 F.3d 668, 671-72 (9th Cir. 2012) (quoting *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006)); see *Avocent Huntsville Corp. v. Aten Int’l Co.*, 552 F.3d 1324, 1328-29 (Fed. Cir. 2008). Although the plaintiff cannot simply rest on the bare allegations of its complaint, uncontroverted allegations in the complaint must be taken as true, and conflicts between parties over statements in affidavits must be resolved in the plaintiff’s favor. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004); see *CollegeSource*, 653 F.3d at 1073; *Avocent Huntsville*, 552 F.3d at 1329. The court must construe the pleadings and affidavits in the light most favorable to the plaintiff. *Silent Drive, Inc. v. Strong Indus., Inc.*, 326 F.3d 1194, 1201 (Fed. Cir. 2003).

The test for whether personal jurisdiction exists involves two basic inquiries: (1) whether the applicable long-arm statute is satisfied and (2) whether the assertion of personal jurisdiction satisfies due process. See *CollegeSource*, 653 F.3d at 1073; *Silent Drive*, 326 F.3d at 1200. Where, as here, no federal long-arm statute applies, the court applies the long-arm statute of the state in which it sits. *Schwarzenegger*, 374 F.3d at 800; see *Silent Drive*, 326 F.3d at 1200. “Washington’s long-arm statute extends jurisdiction over a defendant to the fullest extent permitted” by due process. *Wash. Shoe*, 704 F.3d at 672 (citing RCW 4.28.185 and *Shutte v. Carnival Cruise Lines*, 783 P.2d 78, 82 (Wash. 1989)). Thus, the court’s jurisdictional analysis “collapses into a single determination of whether the exercise of personal jurisdiction comports with due process.” *Avocent Huntsville*, 552 F.3d at 1329; *Wash. Shoe*, 704 F.3d at 672. Federal

1 due process requires that a nonresident defendant have sufficient “minimum contacts”  
 2 with the forum such that the exercise of jurisdiction does not “offend traditional notions  
 3 of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316  
 4 (1945); *see also Schwarzenegger*, 374 F.3d at 801; *Avocent Huntsville*, 552 F.3d at 1329.

5 “Because the issue of personal jurisdiction in a declaratory action for patent  
 6 invalidity and non-infringement is intimately related to patent law,” personal jurisdiction  
 7 over Cray’s patent claims is governed by the law of the Federal Circuit. *Silent Drive*, 326  
 8 F.3d at 1201 (citing *Deprenyl Animal Health, Inc. v. Univ. of Toronto Innovations*  
 9 *Found.*, 297 F.3d 1343, 1348 (Fed. Cir. 2002)). However, Ninth Circuit law governs  
 10 personal jurisdiction over Cray’s non-patent claims because that issue is not “intimately  
 11 involved with the substance of the patent laws.” *Avocent Hunstville*, 552 F.3d at 1328  
 12 (quoting *Akro Corp. v. Luker*, 45 F.3d 1541, 1543 (Fed. Cir. 1995)); *see also Silent*  
 13 *Drive*, 326 F.3d at 1201.

#### 14 1. Specific personal jurisdiction<sup>4</sup>

15 Both the Ninth Circuit and the Federal Circuit employ a three-part test to  
 16 determine whether an exercise of specific personal jurisdiction satisfies due process.

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 18 <sup>4</sup> Two varieties of personal jurisdiction are possible: general and specific. *See Goodyear*  
 19 *Dunlop Tires Operations, S.A. v. Brown*, --- U.S. ---, 131 S. Ct. 2846, 2851 (2011). “A court  
 20 may assert general [personal] jurisdiction over foreign (sister-state or foreign-country)  
 21 corporations to hear any and all claims against them when their affiliations with the State are so  
 22 ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Id.* (citing  
*Int’l Shoe*, 326 U.S. at 317). Cray makes no attempt to argue that the court has general personal  
 jurisdiction over Raytheon. (*See Resp.* (omitting any discussion of general personal  
 jurisdiction); *Mot.* at 16, 18 (discussing general personal jurisdiction and arguing Cray has not  
 made a prima facie showing that it exists here).) As such, the court concludes that Cray has  
 failed to show general personal jurisdiction over Raytheon and addresses only specific personal  
 jurisdiction in detail. *See CollegeSource*, 653 F.3d at 1073.

Under the Federal Circuit’s formulation of this test, the court asks “(1) whether the defendant ‘purposefully directed’ its activities at residents of the forum; (2) whether the claim ‘arises out of or relates to’ the defendant’s activities with the forum; and (3) whether assertion of personal jurisdiction is ‘reasonable and fair.’” *Silent Drive*, 326 F.3d at 1202 (quoting *Inamed Corp. v. Kuzmak*, 249 F.3d 1356, 1360 (Fed. Cir. 2001)).

The Ninth Circuit states its similar test in somewhat more detail:

(1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;

(2) the claim must be one which arises out of or relates to the defendant’s forum-related activities; and

(3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

*Wash. Shoe*, 704 F.3d at 672. Under either test, if the plaintiff meets the first two prongs, the burden shifts to the defendant to put forth a “compelling case” that the exercise of jurisdiction would be unreasonable. *CollegeSource*, 653 F.3d at 1076 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)); *Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d 1012, 1018 (Fed. Cir. 2009) (quoting *Breckenridge Pharm., Inc. v. Metabolite Labs, Inc.*, 444 F.3d 1356, 1363 (Fed. Cir. 2006)). Specific personal jurisdiction must exist for each claim asserted against a defendant. *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004).

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1       2. Pendent personal jurisdiction

2       Under some circumstances, a court may assert pendent personal jurisdiction over a  
3 defendant on a claim for which no there is no independent basis for personal jurisdiction.  
4 *Id.* A court may do so only when the claim in question “arises out of a common nucleus  
5 of operative facts” with a claim in the suit over which the court does have personal  
6 jurisdiction. *Id.* at 1180-81; *Silent Drive*, 326 F.3d at 1206. “Whether to exercise  
7 pendent personal jurisdiction is committed to the sound discretion of the district court.”  
8 *CE Distrib., LLC v. New Sensor Corp.*, 380 F.3d 1107, 1113 (9th Cir. 2004). For  
9 instance, the court may dismiss pendent claims “where considerations of judicial  
10 economy, convenience and fairness to litigants so dictate.” *Action Embroidery*, 368 F.3d  
11 at 1181 (quoting *Oetiker v. Werke*, 556 F.2d 1, 5 (D.C. Cir. 1977)) (internal quotation  
12 marks omitted).

13 **B. Cray’s Claims**

14       As discussed above, Cray asserts thirteen claims in its amended complaint. (*See*  
15 *Am. Compl.* at 7-23.) The first eight claims are declaratory judgment claims for non-  
16 infringement of the Patents-in-Suit (claims one through four), unenforceability of the  
17 ’909 and ’833 Patents for inequitable conduct (claims five and six), and unenforceability  
18 of the ’909 and ’833 Patents for unclean hands (claims seven and eight). (*See id.* at  
19 7-20.) In the ninth and the tenth claims Cray asks for correction of inventorship  
20 regarding the ’909 and ’833 Patents, and claims eleven through thirteen are state-law  
21 causes of action for unjust enrichment, conversion, and breach of contract. (*See id.* at  
22

20-23.) Raytheon argues that the court possesses neither specific nor pendent personal jurisdiction for these claims. (*See* Mot.; Reply (Dkt. # 44).)

1. Cray's declaratory claims & specific personal jurisdiction

In actions for declaratory judgment of patent non-infringement, unenforceability, and invalidity, specific personal jurisdiction arises out of activities that “relate in some material way to the enforcement or defense of the patent” and are purposefully directed at the forum. *Autogenomics*, 566 F.3d at 1019-20; *see also Avocent Huntsville*, 552 F.3d at 1334; *Petzila, Inc. v. Anser Innovation, LLC*, 620 F. App'x 941, 943 (Fed. Cir. 2015). As the Federal Circuit has explained:

[I]n the context of an action for declaratory judgment of non-infringement, invalidity, and/or unenforceability, the patentee is the defendant, and the claim asserted by the plaintiff relates to the “wrongful restraint [by the patentee] on the free exploitation of non-infringing goods . . . [such as] the threat of an infringement suit.” Thus, the nature of the claim in a declaratory judgment action is “to clear the air of infringement charges.” Such a claim neither directly arises out of nor relates to the making, using, offering to sell, selling, or importing of arguably infringing products in the forum, but instead arises out of or relates to the activities of the defendant patentee in enforcing the patent or patents in suit. The relevant inquiry for specific personal jurisdiction purposes then becomes to what extent has the defendant patentee “purposefully directed [such enforcement activities] at residents of the forum,” and the extent to which the declaratory judgment claim “arises out of or relates to those activities.”

*Avocent Huntsville*, 552 F.3d at 1332 (internal citations omitted) (first alteration added) (quoting *Red Wing Shoe Co. v. Hockerson-Halberstadt, Inc.*, 148 F.3d 1355, 1360 (Fed. Cir. 1998), and *Breckenridge*, 444 F.3d at 1363 (last quotation only)).

Although cease-and-desist letters and licensing negotiations may relate to such claims and be directed at the forum, these activities, without more, are insufficient to

1 confer personal jurisdiction under the “fair play and substantial justice” prong of the due  
2 process analysis. *See id.* at 1334-35; *Radio Sys. Corp. v. Accession, Inc.*, 638 F.3d 785,  
3 789 (Fed. Cir. 2011); *Autogenomics*, 566 F.3d at 1019-21; *Silent Drive*, 326 F.3d at 1202  
4 (noting that the Federal Circuit’s “reasonable and fair” prong corresponds to the “fair  
5 play and substantial justice” prong of the *International Shoe* analysis); *Red Wing Shoe*,  
6 148 F.3d at 1360-61. Instead, these activities must be combined with “other activities”  
7 related to the defense or enforcement of the patent. *Silent Drive*, 326 F.3d at 1202; *see*  
8 *Avocent Huntsville*, 552 F.3d at 1334. Such “other activities” include “initiating judicial  
9 or extra-judicial enforcement within the forum, or entering into an exclusive license  
10 agreement or other undertaking which imposes enforcement obligations with a party  
11 residing or regularly doing business in the forum.” *Avocent Huntsville*, 552 F.3d at 1334  
12 (collecting cases).

13       The court lacks specific personal jurisdiction over Raytheon for Cray’s declaratory  
14 claims. Raytheon’s only activities that are related to enforcement or defense of the  
15 Patents-in-Suit and directed at Washington are the licensing communications that it sent  
16 to Cray and the licensing meeting that took place in Seattle. (*See* Am. Compl. ¶ 11;  
17 Stringfield Decl. ¶¶ 2-13.) Under Federal Circuit precedent, an assertion of jurisdiction  
18 based on such activities alone would not comport with fair play and substantial justice.  
19 *See Autogenomics*, 566 F.3d at 1019-21; *Red Wing Shoe*, 148 F.3d at 1360-61.

20       Cray appears to acknowledge that Raytheon’s licensing communications and the  
21 June 18, 2015, meeting in Seattle are insufficient to confer personal jurisdiction. (*See*  
22 Resp. at 13 (“Raytheon devotes over half of its motion to a single point—that Raytheon’s

1 ‘licensing’ activities in Washington do not by themselves create specific personal  
2 jurisdiction over patent law declaratory judgment claims. Raytheon misses the point.”  
3 (internal citation omitted)).) Cray argues that its amended complaint alleges “other  
4 activities” that, together with the licensing activities, are sufficient to support personal  
5 jurisdiction. (*See id.* at 13-14 (“It is Raytheon’s ‘other activities,’ in combination with its  
6 efforts to extract money from Cray, that form the basis for exercising jurisdiction.”).)  
7 Specifically, Cray asserts that Raytheon’s alleged solicitation of Cray’s proprietary  
8 information from Cray employees in Washington in the early 2000’s constitutes “other  
9 activities” that relate to Cray’s declaratory claims. (*See id.*) The court disagrees.

10 The Federal Circuit has made clear that declaratory patent claims such as Cray’s  
11 arise out of or relate to only enforcement and defense activities. *See Radio Sys.*, 638 F.3d  
12 at 789 (“[A]n action for a declaratory judgment ‘arises out of or relates to the activities of  
13 the defendant patentee in enforcing the patent or patents in suit,’ . . . .”) (quoting *Avocent*  
14 *Huntsville*, 552 F.3d at 1332)); *Avocent Huntsville*, 552 F.3d at 1334 (“[W]e have  
15 consistently required the defendant to have engaged in ‘other activities’ that relate to the  
16 *enforcement* or the *defense of the validity* of the relevant patents.” (emphasis in original)).  
17 “Thus, only those activities of the patentee that relate to the enforcement or defense of the  
18 patent can give rise to specific personal jurisdiction for such an action.” *Radio Sys.*, 638  
19 F.3d at 789. Raytheon’s alleged solicitation of Cray’s proprietary information prior to  
20 filing applications for the Patents-in-Suit does not relate to the enforcement or defense of  
21 the Patents-in-Suit. As such, Raytheon’s alleged solicitation activities cannot constitute  
22



1 “other activities” that support personal jurisdiction over Raytheon on Cray’s declaratory  
2 claims.<sup>5</sup> *See Radio Sys.*, 638 F.3d at 789; *Avocent Huntsville*, 552 F.3d at 1334.

3 Cray resists this conclusion by arguing that the court should broadly construe the  
4 Federal Circuit’s language requiring that the defendant’s contacts relate to “enforcement  
5 or defense” of the patent. (*See Resp.* at 14 n.2.) Cray argues the Federal Circuit  
6 “confirmed” in *Radio Systems* that “activities directed to procurement of a patent, such as  
7 patent prosecution, fall within the scope of . . . ‘enforcement and defense’ activities.” (*Id.*  
8 (citing *Radio Sys.*, 638 F.3d at 790).) The court rejects this argument. First, in *Radio*  
9 *Systems* the Federal Circuit did not hold or even suggest that “enforcement and defense  
10 activities” encompasses procurement activities.<sup>6</sup> Second, none of the conduct that the

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12 <sup>5</sup> Cray suggests that the court should analyze its inequitable conduct and unclean hands  
13 declaratory judgment claims separately and that the set of contacts relevant to those claims is  
14 broader than for the other declaratory claims. (*See Resp.* at 14 (“Raytheon fails to substantively  
15 address the inequitable conduct and unclean hands claims. Nevertheless, the factual  
16 underpinning of those claims root [sic] almost entirely from Raytheon’s contacts with Cray in  
17 Washington—specifically, Raytheon’s acquisition of information from Cray and the resulting  
18 misconduct before the Patent Office.”).) Cray cites no authority for this proposition. Although  
19 the court has been unable to locate any authority that specifically addresses this issue, the Federal  
20 Circuit has indicated that declaratory judgment claims such as Cray’s all depend on enforcement  
21 and defense activities as a basis for specific personal jurisdiction. *See Avocent Huntsville*, 552  
22 F.3d at 1334 (“Because declaratory judgment actions raise non-infringement, invalidity, and/or  
unenforceability issues central to enforcement of the patents in question, we have looked beyond  
the ‘arises out of’ inquiry and have found jurisdiction where such ‘other activities’ in some  
identifiable way ‘relate to’ enforcement of those patents in the forum. . . . [W]e have consistently  
required the defendant to have engaged in ‘other activities’ that relate to the *enforcement* or the  
*defense of the validity* of the relevant patents.” (emphasis in original)); *Radio Sys.*, 638 F.3d at  
789 (“[O]nly those activities of the patentee that relate to the enforcement or defense of the  
patent can give rise to specific personal jurisdiction for [an action for a declaratory judgment].”);  
*see also Petzila*, 620 F. App’x at 943. Accordingly, the court rejects Cray’s argument.

<sup>6</sup> The plaintiff in *Radio Systems* argued that in *Electronics for Imaging, Inc. v. Coyle*, 340  
F.3d 1344 (Fed. Cir. 2003), the Federal Circuit found personal jurisdiction based only on the  
defendant’s contacts with the forum related to marketing a patent. 638 F.3d at 790. The *Radio*



1 Federal Circuit has found to constitute “other activities” is analogous to soliciting the  
 2 technology underlying a patent application, as Cray alleges here. *See Avocent Huntsville*,  
 3 552 F.3d at 1334-35 (collecting and summarizing Federal Circuit authority on the subject  
 4 and explaining that “other activities” include initiating judicial or extra-judicial  
 5 enforcement activities within the forum and entering into an undertaking, such as an  
 6 exclusive licensing agreement, that imposes enforcement obligations with a forum  
 7 resident); *Elecs. for Imaging*, 340 F.3d at 1351 (finding sufficient “other activities”  
 8 where, during prosecution, the defendant-patentee hired a forum-based attorney who  
 9 contacted the forum-based plaintiff to report on the progress of the pending application).  
 10 Raytheon’s alleged pre-application solicitation of information from Cray does not  
 11 constitute “other activities” related to the enforcement or defense of the Patents-in-Suit.<sup>7</sup>

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13 *Systems* court distinguished *Electronics for Imaging*, observing that in that case the patentee  
 14 hired California (i.e., forum-based) counsel to communicate with the California-based plaintiff  
 15 on the patentee’s behalf, that counsel communicated with the plaintiff on multiple occasions to  
 16 report on the progress of the patentee’s pending patent application, and that counsel informed the  
 17 plaintiff that the patentee had a number of patents and had previously sued large companies for  
 18 patent infringement and won. *Id.* at 790-91 (also noting that the patentee in *Electronics for*  
 19 *Imaging* explicitly threatened litigation unless the plaintiff delivered \$18,000,000.00). The  
 20 *Radio Systems* court explained that such conduct went beyond marketing and was relevant to  
 personal jurisdiction because the patentee had “retained agents in the forum to assist in the  
 enforcement of its patent rights.” *Id.* at 791 (“Communications between a forum state attorney  
 and the declaratory judgment plaintiff relating to the enforcement or defense of the patent  
 therefore constitute in-state contacts that are attributable to the patentee and relevant to the  
 exercise of personal jurisdiction.”). Contrary to Cray’s assertion, this portion of *Radio Systems*  
 does not indicate that “activities directed to the procurement of a patent” qualify as  
 “‘enforcement and defense’ activities.” (Resp. at 14 n.2.)

21 <sup>7</sup> The court notes that even if Cray were correct that pre-application solicitation of  
 22 information relates to enforcement and defense, the court would nevertheless lack personal  
 jurisdiction on Cray’s claims for declaratory judgment of non-infringement of the ’274 and ’714  
 Patents. “Other activities” must relate to the enforcement or defense of “the relevant patents.”

1 The court therefore lacks specific personal jurisdiction over Raytheon for Cray's  
 2 declaratory judgment claims.

3 2. Cray's correction of inventorship claims

4 In its amended complaint, Cray asks the court to rule that Cray is an inventor of  
 5 the technology disclosed in the '909 and '833 Patents. (*See* Am. Compl. at 20-21.) The  
 6 court denies Raytheon's motion to dismiss these claims for lack of personal jurisdiction.  
 7 As discussed above, the exercise of specific personal jurisdiction satisfies due process  
 8 where (1) the defendant purposefully directed its activities at residents of the forum, (2)  
 9 the claim arises out of or relates to the defendant's activities in the forum, and (3) the  
 10 assertion of personal jurisdiction is reasonable and fair. *Silent Drive*, 326 F.3d at  
 11 1201-02.

12 Cray has adequately alleged that Raytheon purposefully directed its activities at a  
 13 Washington resident—namely, Cray and its Washington-based employees—and that  
 14 Cray's correction of inventorship claims arise out of or relate to those activities. *See id.*  
 15 Specifically, Cray alleges that (a) its employees, including at least one Washington-based  
 16 employee named Robert Alverson, developed the technology underlying the '909 and

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18 *Avocent Huntsville*, 552 F.3d at 1334. In the amended complaint, Cray alleges that Raytheon  
 19 obtained Cray's proprietary information and used that information to file the '874 Application,  
 20 which led to the '909 and '833 Patents. (*See* Am. Compl. ¶¶ 28-30; *see also id.* ¶¶ 51-108  
 21 (alleging inequitable conduct, unclean hands, and correction of inventorship only with respect to  
 22 the '909 and '833 Patents), 109-23 (mentioning only those two patents in articulating the unjust  
 enrichment, conversion, and breach of contract claims). Cray does not allege, however, that  
 Raytheon obtained the technology underlying the '274 and '714 Patents from Cray. (*See* Am.  
 Compl.) As such, even under Cray's theory of "other activities," Raytheon's alleged solicitation  
 activities would not support personal jurisdiction for Cray's declaratory claims regarding the  
 '274 and '714 Patents.

1 '833 Patents while working on Red Storm and the SeaStar interconnect; (b) Raytheon  
2 solicited proprietary information about Red Storm and the SeaStar interconnect from  
3 Cray and its employees in Washington, including by entering into NDAs with Cray and  
4 through Mr. Ballew, a Raytheon employee who served on the Red Storm oversight  
5 committee; and (c) Raytheon used the information it learned about Red Storm and the  
6 SeaStar interconnect to obtain the '909 and '833 Patents. (*See* Am. Compl. ¶¶ 18-30, 52-  
7 55, 64-65, 79-80, 85-86, 94, 98, 101-08.)

8 Raytheon argues that the court lacks personal jurisdiction because Cray has not  
9 alleged that any Raytheon activities relevant to this claim “occurred in Washington State,  
10 or that Raytheon ‘purposefully directed’ any of these activities at Washington residents.”  
11 (Mot. at 25-26.) Specifically, according to Raytheon, Cray fails to allege that “Mr.  
12 Ballew’s participation in the Sandia committee was related to his Raytheon  
13 employment,” that Mr. Ballew “solicited any such allegedly confidential information  
14 from Cray,” that “Mr. Ballew came to Washington or obtained allegedly confidential  
15 information from Washington,” or that “Raytheon solicited any such confidential  
16 information from Cray or that Raytheon even received any confidential information from  
17 Washington.” (*Id.* at 25.) The court disagrees.

18 As Cray points out in its response brief, when evaluating personal jurisdiction  
19 without an evidentiary hearing, the court must take all uncontroverted allegations in the  
20 complaint as true and construe the pleadings and affidavits in the light most favorable to  
21 Cray. *See CollegeSource*, 653 F.3d at 1073; *Silent Drive*, 326 F.3d at 1201; (Resp. at  
22 12); *see also Wash. Shoe*, 704 F.3d at 672. Cray alleges that Mr. Ballew was a Raytheon

1 employee during his participation on the oversight committee and used his Raytheon  
2 email address for communications related to the oversight committee. (*See* Am. Compl.  
3 ¶ 23.) Cray further alleges that Mr. Ballew worked and interacted with Cray employees  
4 residing in Seattle. (*Id.* ¶ 22.) In addition, Cray alleges that Raytheon entered into three  
5 NDAs with Cray, all of which identified Cray as a Washington corporation, and pursuant  
6 to which Cray was to disclose to Raytheon proprietary information concerning Red  
7 Storm. (*See id.* ¶¶ 22-23.) Cray also alleges that Raytheon “intentionally acquired a  
8 substantial portion of [the information that went into the ’874 Application] from Cray and  
9 its employees located in Washington.” (*Id.* ¶ 29; *see also id.* ¶¶ 30, 52-55, 64-65, 79-80,  
10 85-86, 94, 98, 101-08.) Construing Cray’s allegations in the light most favorable to Cray,  
11 the court concludes that Cray has adequately alleged that Raytheon purposefully directed  
12 activities at Washington residents and Cray’s correction of inventorship claim arises out  
13 of those activities. *See Silent Drive*, 326 F.3d at 1201-02.

14 Raytheon also argues that *Ali v. Carnegie Institute of Washington*, 967 F. Supp. 2d  
15 1367 (D. Or. 2013), shows that Cray’s allegations fail to support personal jurisdiction for  
16 correction of inventorship claims. (*See* Mot. at 26.) The court has reviewed that case and  
17 finds Raytheon’s interpretation unpersuasive. In attempting to support specific personal  
18 jurisdiction for his claims regarding correction of inventorship, the plaintiff in *Ali* relied  
19 on the defendant-patentee’s post-issuance licensing activity within Oregon. *See* 967 F.  
20 Supp. 2d at 1387, 1390-91. The *Ali* court found such contacts “irrelevant to an action  
21 seeking to correct the inventorship of an issued patent, which implicates a time period  
22 before the existence of a patent to enforce.” *Id.* at 1390-91. The court also noted that,

1 according to the plaintiff's allegations, the plaintiff's contributions to the inventive  
2 activity occurred in Massachusetts. *See id.* at 1390.

3 This case is unlike *Ali*. Cray does not rely on post-issuance contacts to support its  
4 correction of inventorship claims, nor does it assert that its contributions to the '909 and  
5 '833 Patents occurred outside Washington. *See id.* at 1390-91; (Am. Compl.) Accepted  
6 as true and construed in the light most favorable to Cray, Cray's allegations show that  
7 Cray employees invented the technology underlying the '909 and '833 Patents in  
8 Washington, and that Raytheon obtained the '909 and '833 Patents only after acquiring  
9 information about that technology through activities directed at Cray and its employees in  
10 Washington. (*See* Am. Compl. ¶¶ 18-30, 52-55, 64-65, 79-80, 85-86, 94, 98, 101-08.)  
11 As such, *Ali* does not support Raytheon's position.

12 Because Cray meets the first two elements of the specific personal jurisdiction  
13 test, Raytheon bears the burden to present a "compelling case" that the exercise of  
14 personal jurisdiction would be unreasonable. *Autogenomics*, 566 F.3d at 1018. "The  
15 reasonableness inquiry encompasses factors including (1) the burden on the defendant,  
16 (2) the interests of the forum state, (3) the plaintiff's interest in obtaining relief, (4) the  
17 interstate judicial system's interest in obtaining the most efficient resolution of  
18 controversies, and (5) the shared interest of the several states in furthering fundamental  
19 substantive social policies." *Elecs. for Imaging*, 340 F.3d at 1352 (citing *Inamed*, 249  
20 F.3d at 1363). Raytheon has failed to carry its burden of showing that jurisdiction would  
21 be unreasonable.  
22

1 In its opening brief, Raytheon argues only that efficiency militates against  
2 personal jurisdiction. (*See* Mot. at 26-28.) Raytheon's argument is based on the  
3 assumptions that this court will dismiss Cray's non-infringement claims and that the  
4 Eastern District of Texas will retain Raytheon's corresponding infringement claims. (*See*  
5 *id.*) From that premise, Raytheon asserts that Cray's remaining claims are merely  
6 defenses to infringement that would be most efficiently disposed of as part of the  
7 infringement litigation in the Eastern District of Texas. (*See id.*) According to Raytheon,  
8 that case is "well underway." (*Id.* at 27.)

9 This argument falls well short of making a "compelling case" that exercising  
10 jurisdiction would be unreasonable. *Autogenomics*, 566 F.3d at 1018. Raytheon's  
11 efficiency argument relies on the assumption that the Eastern District of Texas will retain  
12 Raytheon's infringement claims; however, Cray has moved to dismiss those claims for  
13 improper venue, and it appears that Cray's motion remains pending. (*See* Mot. at 26-28);  
14 *Raytheon Co. v. Cray, Inc.*, No. 15-cv-1554-JRG-RSP, Dkt. # 21 (E.D. Tex.).  
15 Furthermore, Raytheon fails to address any other reasonableness factors in its opening  
16 brief, and the court does not consider arguments raised for the first time in Raytheon's  
17 reply brief. (*See* Mot.; Reply at 14-15); *Bazuaye v. I.N.S.*, 79 F.3d 118, 120 (9th Cir.  
18 1996) ("Issues raised for the first time in the reply brief are waived."). Although the  
19 court will endeavor to protect the interstate judicial system's interest in obtaining the  
20 most efficient resolution of controversies, the court lacks sufficient information to  
21 determine that exercising personal jurisdiction over Raytheon on Cray's correction of  
22

inventorship claims is so inefficient that it violates due process.<sup>8</sup> *See Elecs. for Imaging*, 340 F.3d at 1352. The court therefore denies Raytheon’s motion to dismiss Cray’s correction of inventorship claims for lack of personal jurisdiction. *See Autogenomics*, 566 F.3d at 1018.

### 3. Cray’s state-law claims

Cray brings state-law claims for unjust enrichment, conversion, and breach of contract. (*See Am. Compl.* at 21-23.) The court likely has specific personal jurisdiction over these claims, *see CollegeSource*, 653 F.3d at 1076-80 (analyzing specific personal jurisdiction for a claim sounding in tort); *Boschetto v. Hansing*, 539 F.3d 1011, 1016-17 (9th Cir. 2008) (analyzing specific personal jurisdiction for a claim sounding in contract); *supra* § III.B.2; however, the court need not address that issue because pendent personal jurisdiction is applicable. Cray’s state-law claims “arise out of a common nucleus of operative facts” with Cray’s correction of inventorship claims—namely, Raytheon’s alleged solicitation and misappropriation of Cray’s technology. *Silent Drive*, 326 F.3d at 1206 (internal quotation marks omitted); *see also Action Embroidery*, 368 F.3d at 1180-81; (*Am. Compl.* at 4-7, 21-23.) The court asserts pendent personal jurisdiction for

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<sup>8</sup> “Where a defendant who has purposefully directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. Most such considerations usually may be accommodated through means short of finding jurisdiction unconstitutional. For example, . . . a defendant claiming substantial inconvenience may seek a change of venue.” *Inamed*, 249 F.3d at 1363-64 (quoting *Akro*, 45 F.3d at 1546) (alteration in original). Raytheon has indicated it will file additional motions to dismiss any claims that remain after the court rules on this motion. (*See Mot.* at 8 n.4; *see also id.* at 26-27; *Reply* at 10-11 (arguing that Raytheon’s Eastern District of Texas case is the first-filed jurisdictionally proper suit).)

1 Cray's state-law claims and therefore denies Raytheon's request to dismiss those claims.

2 *See Silent Drive*, 326 F.3d at 1206; *Action Embroidery*, 368 F.3d at 1180-81.

3 4. Cray's declaratory claims & pendent personal jurisdiction

4 Although the court exercises specific personal jurisdiction for Cray's correction of  
5 inventorship claims, the court does not assert pendent personal jurisdiction for Cray's  
6 declaratory claims because the declaratory and correction of inventorship claims do not  
7 arise out of a common nucleus of operative facts. *See Silent Drive*, 326 F.3d at 1206;  
8 *Action Embroidery*, 368 F.3d at 1180-81. As discussed above, Cray's correction of  
9 inventorship claims arise out Raytheon's alleged solicitation and misappropriation of  
10 Cray's technology, whereas Cray's declaratory claims arise out of Raytheon's  
11 enforcement and defense activities. *See supra* §§ III.B.1-2; *cf. Silent Drive*, 326 F.3d at  
12 1205-06 (finding pendent personal jurisdiction for a non-infringement claim based on  
13 specific personal jurisdiction for a due process notice claim where both claims arose out  
14 of the defendant's efforts to prevent the plaintiff from manufacturing a particular device);  
15 *Inamed*, 249 F.3d at 1262-63 (finding pendent personal jurisdiction for non-infringement  
16 claims based on specific personal jurisdiction for a patent misuse claim where the  
17 defendant previously had an exclusive license agreement with the plaintiff and allegedly  
18 made misstatements regarding the patent while negotiating the license). Furthermore,  
19 Cray admits that its "claims for correction of inventorship . . . are not dependent on the

20 //

21 //

22 //



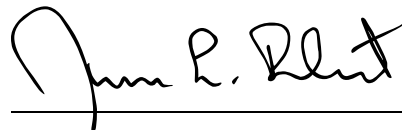
1 functionality of Cray's products" (Resp. at 24 n.4), a factual issue that lies at the core of  
2 Cray's non-infringement claims.<sup>9</sup>

3 The court will not assert pendent personal jurisdiction for Cray's declaratory  
4 claims. Consequently, the court grants Raytheon's motion with respect to Cray's  
5 declaratory claims and dismisses those claims without prejudice for lack of personal  
6 jurisdiction.

#### 7 IV. CONCLUSION

8 For the foregoing reasons, the court GRANTS in part and DENIES in part  
9 Raytheon's motion to dismiss for lack of personal jurisdiction (Dkt. # 37) and  
10 DISMISSES counts one through eight of Cray's amended complaint without prejudice.

11 Dated this 5th day of April, 2016.

12  
13 

14 JAMES L. ROBERT  
15 United States District Judge

16  
17  
18  
19 \_\_\_\_\_  
20 <sup>9</sup> Cray's inequitable conduct and unclean hands declaratory claims share common factual  
21 issues with Cray's correction of inventorship claims. (*See* Am. Compl. at 10-21.) However,  
22 even if those claims arise from a common nucleus of operative facts, the court exercises its  
discretion not to assert pendent personal jurisdiction over Cray's inequitable conduct and unclean  
hands claims to avoid separating those declaratory claims from Cray's non-infringement  
declaratory claims. *See CE Distrib.*, 380 F.3d at 1113; *Action Embroidery*, 368 F.3d at 1181.